

Richard C. Weston (State Bar No. 126491)
Wynn C. Kaneshiro (State Bar No. 166683)
WESTON & McELVAIN LLP
1960 East Grand Avenue, Suite 400
El Segundo, California 90245
Telephone: (213) 596-8000
Facsimile: (213) 596-8039
E-mail: rweston@wmattorneys.com
wkaneshiro@wmattorneys.com

Attorneys for Defendant, Third Party Plaintiff
And Counterclaimant **AmGUARD INSURANCE
COMPANY**

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

STARR INDEMNITY & LIABILITY
COMPANY, a Texas Corporation,

Plaintiff,

vs.

AMGUARD INSURANCE COMPANY, a
Pennsylvania Corporation,

Defendant.

Case No.: 4:20-cv-959-SI
Assigned to: Hon. Susan Illston

**THIRD PARTY PLAINTIFF AND
COUNTERCLAIMANT AMGUARD
INSURANCE COMPANY'S THIRD
PARTY COMPLAINT AND
COUNTERCLAIM FOR RESCISSION
AND DECLARATORY RELIEF**

AMGUARD INSURANCE COMPANY, a
Pennsylvania corporation,

Third Party Plaintiff and
Counterclaimant,

vs.

ZORIALI LLC, a California limited liability
company; ANNE KIHAGI, a California citizen;
CHRISTINA MWANGI, a California citizen;
DALE DUNCAN, a California citizen; MARTA
MUNOZ MENDOZA, a California citizen; and
STARR INDEMNITY & LIABILITY
COMPANY, a Texas corporation,

Third Party Defendants and
Counter-Defendant.

1 Defendant AmGUARD Insurance Company, for its Counterclaim against Starr Indemnity
2 & Liability Company and for its Third Party Complaint against the Third Party Defendants,
3 alleges and avers as follows:

4 **JURISDICTION**

5 1. This Court has original jurisdiction under 28 U.S.C. §1332 in that the above-
6 captioned matter is a civil action between citizens of different states in which the matter in
7 controversy exceeds \$75,000, exclusive of costs and interests, in that, among other things,
8 plaintiff Starr Indemnity & Liability Company seeks damages in excess of \$300,000 with respect
9 to the defense fees and costs it incurred with respect to the underlying *Smyth* Lawsuits and the
10 plaintiffs in the underlying *Duncan* Lawsuits seek damages in excess of \$2,700,000 based on the
11 judgment awarded in the *Duncan* Lawsuits.

12 **INTRODUCTION**

13 2. Pursuant to 28 U.S.C. §2201, AmGUARD Insurance Company (hereinafter
14 "AmGUARD") seeks to rescind the Businessowner's Policy issued by AmGUARD to the named
15 insured Zoriall LLC, policy number Z0BP601626 with effective dates of July 20, 2015 to July 20,
16 2016 ("Policy"). AmGUARD also seeks a judicial determination that no potential for coverage
17 and no coverage exists for various underlying actions brought against Zoriall LLC, Anne Kihagi
18 and Christina Mwangi including the judgment awarded against them in the *Duncan* Lawsuits.

19 3. AmGUARD is entitled to rescission based on the material misrepresentations,
20 fraudulent representations and/or concealment of material facts in the insurance application
21 submitted by Zoriall LLC to AmGUARD. For the same reasons, AmGUARD is entitled to a
22 declaration that no coverage exists for the underlying actions. In addition, various policy
23 provisions, endorsements and exclusions bar coverage for the underlying actions.

24 **THE PARTIES**

25 4. Plaintiff AmGUARD Insurance Company is, and at all relevant times was, an
26 insurance company organized under the laws of the State of Pennsylvania having its principal
27 place of business in Wilkes-Barre, Pennsylvania.

28 ///

1 5. AmGUARD is informed and believes, and on that basis alleges, that Starr
2 Indemnity & Liability Company ("Starr") is, and at all relevant times was, a corporation
3 organized under the laws of the State of Texas having its principal place of business in New
4 York, New York.

5 6. AmGUARD is informed and believes, and on that basis alleges, that defendant
6 Anne Kihagi ("Kihagi") is and at all relevant times was, a citizen of California, residing in Los
7 Angeles County, California.

8 7. AmGUARD is informed and believes, and on that basis alleges, that defendant
9 Christina Mwangi ("Mwangi") is and at all relevant times was, a citizen of California residing in
10 Alameda County, California.

11 8. AmGUARD is informed and believes, and on that basis alleges, that defendant
12 Zorall LLC ("Zorall") is, and at all relevant times was, a limited liability company organized
13 under the laws of the State of California having its principal place of business in West
14 Hollywood, California. AmGUARD is informed and believes, and on that basis alleges, that
15 Zorall's sole member is Anne Kihagi.

16 9. AmGUARD is informed and believes, and on that basis alleges, that defendant
17 Dale Duncan ("Duncan") is, and at all relevant times was, a citizen of California, residing in San
18 Francisco County, California.

19 10. AmGUARD is informed and believes, and on that basis alleges, that defendants
20 Marta Munoz Mendoza ("Mendoza") is, and at all relevant times was, a citizen of California,
21 residing in San Francisco County, California.

22 11. Venue is proper in this district pursuant to 28 U.S.C. §1391 in that the defendants
23 are subject to personal jurisdiction in this district at the time that the action commenced, the
24 property insured under the Policy and owned by Zorall LLC is located in San Francisco, the
25 underlying actions giving rise to this action are and/or were pending in San Francisco Superior
26 Court, and there is no district in which this action may otherwise be brought.

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28 ///

BACKGROUND FACTS

THE AMGUARD POLICY

12. On or about July 8, 2015, Zorall submitted an application to AmGUARD for a Businessowners Policy for its property located at 69 Hill Street, San Francisco, California (hereinafter "Hill Street Property"). In that application, Zorall represented to AmGUARD that: a) it had no litigation during the prior five years; b) it had a property maintenance agreement in place for the property; and c) the Hill Street Property was in full compliance with all life safety requirements and all applicable building ordinances and laws. A true and correct copy of the pertinent portions of the Application is attached as **Exhibit A** to this Counterclaim and Third Party Complaint.

13. These representations were material to AmGUARD's underwriting process and AmGUARD relied on the accuracy of these representations in issuing a policy.

14. Based on Zorall's representations, AmGUARD issued a Businessowner's Policy, policy number Z0BP601626 to Zorall LLC for the policy period July 20, 2015 to July 20, 2016 (the Policy). A true and correct copy of the Declarations pages of the Policy is attached as **Exhibit B** to this Counterclaim and Third Party Complaint.

15. The Policy provides in Businessowner's Coverage Form (Form BP 00 03 01 10) as follows:

...
SECTION II – LIABILITY

A. Coverages

1. Business Liability

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Paragraph **D.** -- Liability and Medical Expenses Limits Of Insurance in Section II - Liability; and

(2) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of judgments or settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph f. Coverage Extension - Supplementary Payments.

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" and "property damage" is caused by an "occurrence" that takes place in the coverage territory;

(b) The "bodily injury" or "property damage" occurs during the Policy period;

...

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the Policy period.

...

F. Liability and Medical Expenses Definitions

...

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury" arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of uses shall be deemed to occur at the time of the occurrence that caused it.

....

16. In addition, the Policy provides:

B. Exclusions

1 **1. Applicable to Business Liability Coverage**

2 This insurance does not apply to:

3 **a. Expected or Intended Injury**

4 "Bodily injury" or "property damage" (including any unexpected or unintended
5 portion thereof) if any "bodily injury" or "property damage" was expected or
6 intended from the standpoint of any insured. This exclusion does not apply to
7 "bodily injury" resulting from the use of reasonable force to protect persons or
8 property."

9 ...

10 **p. Personal and Advertising Injury**

11 (1) Caused by or at the direction of or with the consent or acquiescence of any
12 insured with the knowledge that the act would violate the rights of another
13 and would inflict "personal and advertising injury;"

14

15 17. In addition, the Policy provides:

16 **E. Liability and Medical Expenses General Conditions**

17 ...

18 **2. Duties in the Event of Occurrence, Offense, Claim Or Suit**

19 **a.** You must see to it that we are notified as soon as practicable of an
20 "occurrence" or an offense which may result in claim. To the extent possible,
21 notice should include:

22 (1) How, when and where the "occurrence" or offense took place;

23 (2) The names and addresses of any injured persons and witnesses; and

24 (3) The nature and location of any injury or damage arising out of the
25 "occurrence" or offense.

26 **b.** If a claim is made or "suit" is brought against any insured, you must:

27 (1) Immediately record the specifics of the claim or "suit" and the date
28 received; and

 (2) Notify us as soon as practicable.

 You must see to it that we receive written notice of the claim or "suit" as soon
as practicable.

c. You and any other involved insured must:

 (1) Immediately send us copies of any demands, notices, summonses or legal
papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit" and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

...

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

...

5. Representations

When You Accept This Policy

By Accepting this policy, you agree:

- a. The statements in the Declaration are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

* * *

18. In addition, the Policy provides:

SECTION III – COMMON POLICY CONDITIONS (APPLICABLE TO SECTION I - PROPERTY AND SECTION II - LIABILITY)

C. Concealment, Misrepresentation Or Fraud

This policy is void if any insured, whether before or after a loss, has committed fraud or intentionally concealed or misrepresented any material fact or circumstance concerning:

- 1. This policy;
- 2. The Covered Property;
- 3. An insured's interest in Covered Property; or
- 4. A claim under this policy.

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PRIOR LITIGATION INVOLVING ZORIALI, KIHAGI AND MWANGI

19. Although Zoriali represented to AmGUARD that it was not involved in any litigation in the past five years, AmGUARD has discovered that the representation was false. Among other things, Zoriali was involved in the following litigation when it submitted the insurance application to AmGUARD: a) *Duncan v. Zoriali LLC*, San Francisco Superior Court, Case No. CGC15-545655 filed on May 4, 2015 ("*Duncan I*"); b) *Zoriali LLC v. Duncan*, San Francisco County Superior Court, Case No. CUD-15-652719 filed on June 25, 2015; c) *City and County of San Francisco v. Kihagi*, San Francisco County Superior Court, Case No. CGC-15-546152 filed on June 4, 2015; and d) *Reggars v. Kihagi*, San Francisco County Superior Court, Case No. CGC-15-546342 filed on June 12, 2015.

20. In the *Duncan I* Action, Dale Duncan and Marta Munoz Mendoza alleged causes of action for nuisance, breach of contract, negligence and violation of San Francisco Administrative Code Chapter 37.10B against Zoriali LLC, Anne Kihagi, and Christina Mwangi (collectively "Kihagi Defendants"). They also alleged various defective conditions at the Hill Street Property and further alleged that the Kihagi Defendants violated the City of San Francisco Rent Ordinance by failing to provide established contractual housing services including an on-site coin laundry, secure accessible mail, and garage bicycle storage, and by interrupting required housing services including common area electrical service and lights, and failing to perform necessary repairs and maintenance.

21. AmGUARD is informed and believes that Zoriali was served with the Complaint in the *Duncan I* Action prior to June 11, 2015.

22. AmGUARD is informed and believes that on June 25, 2015, Zoriali filed an unlawful detainer action in San Francisco County Superior Court, Case No. CUD-15-652719, against Dale Duncan and Marta Mendoza, regarding eviction from the Hill Street Property (the "*Duncan UD* Action").

23. AmGUARD is informed and believes that on or about June 4, 2015, the City and County of San Francisco filed an action in the San Francisco County Superior Court, Case No. CGC-15-546152, against the Kihagi Defendants alleging multiple violations of the San Francisco

1 Administrative Code, violations of the state housing law, public nuisance, and unfair business
2 practices, with regarding to multiple properties including the Hill Street Property ("the *City*
3 Action").

4 24. AmGUARD is informed and believes that Zorall was served with the *City* Action
5 on or about June 15, 2015 while Kihagi and Mwangi were each served with the *City* Action on
6 June 22, 2015.

7 25. AmGUARD is informed and believes that on June 12, 2015, Nicholas Reggars and
8 Erin Fromherz filed an action in the San Francisco County Superior Court, Case No. CGC-15-
9 546342, against Zorall, Kihagi and Mwangi claiming, among other things, breach of implied
10 covenant of quiet enjoyment contract, negligence, violation of statutory obligations, statutory lock
11 out, unfair business practices, and nuisance arising out of their tenancy at the Hill Street Property
12 (the "*Reggars* Action").

13 26. At no time during the process of applying for the Policy did the Kihagi Defendants
14 disclose to AmGUARD the existence of the *Duncan I* Action, the *Duncan UD* Action, the *City*
15 Action or the *Reggars* Action.

16 27. Had AmGUARD known during the application process of the existence and nature
17 of these lawsuits against Zorall with respect to the Hill Street Property, AmGUARD would not
18 have issued the Policy.

19 28. Notably, the Kihagi Defendants have never tendered the *Duncan* Action, the *City*
20 Action or the *Reggars* Action to AmGUARD.

21 **REPRESENTATION REGARDING COMPLIANCE WITH**
22 **APPLICABLE ORDINANCES AND LAWS**

23 29. In the Application to AmGUARD, Zorall represented that the Hill Street Property
24 was in full compliance with all life safety requirements and all applicable building ordinances and
25 laws. AmGUARD is informed and believes that at the time of the application, the Hill Street
26 Property was not in full compliance with all requirements and ordinances and laws.

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1 30. Had AmGUARD known during the application process that the Hill Street
2 Property failed to comply with all life safety requirements and applicable building ordinances and
3 laws, AmGUARD would not have issued the Policy.

4 **REPRESENTATION REGARDING PROPERTY**

5 **MAINTENANCE AGREEMENT**

6 31. In the Application to AmGUARD, Zorall represented that it had a property
7 maintenance agreement in place for the Hill Street Property. AmGUARD is informed and
8 believes there was no such property maintenance agreement in place for the Hill Street Property.

9 32. Had AmGUARD known during the application process that there was no property
10 maintenance agreement in place for the Hill Street Property, AmGUARD would not have issued
11 the Policy.

12 **THE UNDERLYING SMYTH LAWSUITS**

13 33. On July 21, 2015, Brian Smyth and Ben Hutchinson filed a complaint in the San
14 Francisco County Superior Court, Case No. CGC-15-546973 against Anne Kihagi, Zorall LLC,
15 and Christina Mwangi (the *Smyth I* Action). The *Smyth I* Action alleged defective conditions in
16 the Hill Street Property and alleged causes of action for nuisance, breach of the implied covenant
17 of residential rental agreement, negligent violation of the rental ordinance and unfair business
18 practices.

19 34. The *Smyth I* Complaint alleged that the Kihagi Defendants interfered with Smyth's
20 and Hutchinson's right to quiet use and enjoyment of their housing units, failed to provide
21 housing services required by contract or by state or county laws, abused the landlord's right of
22 access into the rental units, failed to properly complete repairs and/or maintenance, and attempted
23 to influence Smyth and Hutchinson to vacate through intimidation and coercion.

24 35. On July 26, 2016, Brian Smyth and Ben Hutchinson filed a complaint against
25 Kihagi and Zorall titled *Smyth v. Kihagi et al.*, San Francisco Superior Court, Case No. CGC 16-
26 553236 (the "*Smyth II* Action") alleging causes of action for violation of the San Francisco
27 Administrative Code and negligence. Smyth and Hutchinson allege that Kihagi and Zorall
28 engaged in conduct to improperly and illegally recover permanent possession of the rental units,

1 failed to perform work at the units after temporarily evicting them to perform said work, failed to
2 pay required relocation payment and failed to allow them to move back into the units.

3 36. On December 4, 2017, Kihagi sent a copy of the complaints in the *Smyth I* and
4 *Smyth II* Actions (collectively "*Smyth* Lawsuits") to AmGUARD.

5 37. According to Starr, it paid for the attorneys' fees and defense costs incurred by the
6 Kihagi Defendants in connection with the *Smyth* Lawsuits under a policy it issued to Zoriall. In
7 addition, Starr contends that it fully funded the settlement of the *Smyth* Lawsuits on behalf of the
8 Kihagi Defendants in exchange for a dismissal with prejudice.

9 **THE UNDERLYING DUNCAN LAWSUITS**

10 38. As discussed above, AmGUARD is informed and believes that on May 4, 2015,
11 Duncan and Mendoza filed the *Duncan I* Action against the Kihagi Defendants.

12 39. AmGUARD is informed and believes that on April 15, 2016, Duncan and
13 Mendoza filed a complaint in an action titled *Duncan v. Kihagi*, San Francisco County Superior
14 Court, Case No. CGC 16-551512 (the *Duncan II* Action). Duncan and Mendoza alleged causes
15 of action for violation of the San Francisco Administrative Code and negligence against Zoriall,
16 Kihagi and Mwangi. Duncan and Mendoza alleged that the Kihagi Defendants engaged in
17 conduct to improperly and illegally recover permanent possession of the rental unit, failed to
18 move into the unit after evicting them and failed to offer the unit for rent back to them.

19 40. AmGUARD is informed and believes that the *Duncan I* Action and the *Duncan II*
20 Action were consolidated by the court for trial (the "*Duncan* Lawsuits").

21 41. AmGUARD is informed and believes the *Duncan* Lawsuits were tried to a jury
22 beginning August 29, 2017. On October 17, 2017, Judge Andrew Y.S. Cheng entered judgment
23 on a jury verdict against the Kihagi Defendants. The judgment noted that the provisions of the
24 San Francisco Rent Ordinance, San Francisco Administrative Code sections 37.9(f) and
25 37.10B(c)(5) provides for money damages of not less than three times actual damages to
26 prevailing parties suing in civil courts for harms caused by violations of the San Francisco Rent
27 Ordinance and that San Francisco Rent Ordinance also provides that an award of damages for
28 mental or emotional distress shall likewise be trebled on a factual finding that the landlord acted

1 in knowing violation of or in reckless disregard. The judgment stated that Duncan and Mendoza
 2 are each entitled to judgment against each of the Kihagi Defendants in the amount of three times
 3 \$196,000 for a total of \$588,000 against each defendant for a total sum of \$3,528,000 against all
 4 the Kihagi Defendants. A true and correct copy of the Judgment on Jury Verdict is attached as
 5 **Exhibit C** to this Counterclaim and Third Party Complaint.

6 42. AmGUARD is informed and believes that Judge Cheng issued an Amended
 7 Judgment on December 7, 2017 in the *Duncan* Lawsuits reducing the total recovery in favor of
 8 Duncan and Mendoza and against the Kihagi Defendants to \$2,700,000.

9 43. The Kihagi Defendants have never tendered the *Duncan Lawsuits* to AmGUARD
 10 for defense or indemnity. In fact, AmGUARD was unaware of the *Duncan* Lawsuits until after
 11 the court entered judgment against the Kihagi Defendants. As a result of the lack of notice,
 12 AmGUARD was prejudiced as it was prevented from participating in litigation strategy,
 13 discovery strategy, and settlement discussions.

14 44. On or about July 10, 2018, Starr tendered the *Duncan* Lawsuits to AmGUARD,
 15 over eight months after the judgment was entered.

16 **FIRST CAUSE OF ACTION FOR RESCISSION**

17 (Against All Third Party Defendants and Starr)

18 45. AmGUARD realleges and incorporates herein by reference each and every
 19 allegation contained in paragraphs 1 through 44, inclusive as though fully set forth herein.

20 46. Zorill made specific representations to AmGUARD in procuring the Policy.
 21 AmGUARD relied on the accuracy of those representations in the Application in issuing the
 22 Policy. Based on information later revealed to AmGUARD, Zorill made material
 23 misrepresentations and/or concealed material facts in the course of procuring the Policy.

24 47. Had AmGUARD known the true facts, namely that Zorill, Kihagi and Mwangi
 25 were engaged in several lawsuits concerning the Hill Street Property at the time Zorill submitted
 26 the application to AmGUARD, AmGUARD would not have issued the Policy. Further, had
 27 AmGUARD known of the alleged life safety, building ordinance, and/or statutory violations,
 28 AmGUARD would not have issued the Policy.

48. Pursuant to California Insurance Code § 331, AmGUARD is entitled to rescind the Policy based on Zorials' misrepresentations and/or concealment of material facts. AmGUARD requests that this Court rescind the Policy and deem it void *ab initio*.

SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF

RE NO COVERAGE UNDER THE POLICY

(Against All Third Party Defendants and Starr)

49. AmGUARD realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 48, inclusive as though fully set forth herein.

50. AmGUARD contends that it has no duty to defend or to indemnify the Kihagi Defendants with respect to the *Smyth* and the *Duncan* Lawsuits under the Policy due to the material misrepresentations and/or concealment of materials facts in the insurance application submitted to AmGUARD.

51. An actual controversy exists between AmGUARD, on the one hand, and defendants on the other, as AmGUARD contends that it is not obligated to contribute toward the defense and indemnity of the *Smyth* and *Duncan* Lawsuits, whereas defendants contend to the contrary. AmGUARD seeks a judicial determination that there is no coverage available under the Policy for the *Smyth* and *Duncan* Lawsuits due to Zorials' material misrepresentations and/or concealment of material facts in its insurance application.

52. A judicial declaration is necessary and appropriate at this time, under the circumstances, in order that the parties may ascertain their rights and duties under the Policy.

THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF

RE DUTY TO DEFEND AND INDEMNIFY DUNCAN LAWSUITS

(Against All Third Party Defendants and Starr)

53. AmGUARD realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 52, inclusive as though fully set forth herein.

54. AmGUARD contends that it has no duty to defend the Kihagi Defendants with respect to the *Duncan* Lawsuits and that it has no duty to pay for the judgment awarded against the Kihagi Defendants in the *Duncan* Lawsuits. Among other things, there is no coverage under

the Policy for personal and advertising injury that occurs prior to the inception of the Policy. Second, there is no coverage under the Policy for civil fines, penalties and treble damages and Insurance Code section 533 bars coverage for loss resulting from the wilful act of the insured. Third, the Policy excludes coverage for personal and advertising injury caused by or at the direction of or with the consent or acquiescence of any insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury." Fourth, the voluntary payment provision applies to bar coverage and AmGUARD has no duty to reimburse for defense fees and costs that were incurred prior to tender to AmGUARD. Fifth, there is no coverage because the Kihagi Defendants failed to provide timely notice of the *Duncan* Lawsuits and failed to comply with the terms and conditions in the Policy. In addition, under the terms of the Policy, the Policy is "void if any insured, whether before or after a loss, has committed fraud or intentionally concealed or misrepresented any material fact or circumstance."

55. The Policy provides:

2. Duties in the Event of Occurrence, Offense, Claim or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. . . .
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.
 You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

56. AmGUARD alleges that the Kihagi Defendant failed to comply with the conditions of the Policy including those cited above. The failure to notify AmGUARD of the *Duncan* Lawsuits prejudiced AmGUARD as it was unable to participate in strategic decisions

1 with regard to discovery or trial, and was prevented from participating in any mediation or
 2 settlement discussions and thus prevented from any attempts to resolve the matter short of trial.

3 57. Therefore, AmGUARD seeks a declaration from this court that the failure to notify
 4 AmGUARD of the *Duncan* Lawsuits until after the judge entered judgment on the jury verdict,
 5 substantially prejudiced AmGUARD and relieves AmGUARD of any obligation to defend or
 6 indemnify the Kihagi Defendants in the *Duncan* Lawsuits.

7 58. An actual controversy exists between AmGUARD, on the one hand, and
 8 defendants on the other, as AmGUARD contends that it is not obligated to pay for the defense
 9 and indemnity of the *Duncan* Lawsuits, whereas defendants contend to the contrary. AmGUARD
 10 seeks a judicial determination that there is no coverage available under the Policy for the *Duncan*
 11 Lawsuits and that AmGUARD has no duty to pay for attorneys' fees and costs and for any
 12 judgment awarded against the Kihagi Defendants in the *Duncan* Lawsuits.

13 59. A judicial declaration is necessary and appropriate at this time, under the
 14 circumstances, in order that the parties may ascertain their rights and duties under the Policy.

15 **FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF**

16 **RE DUTY TO DEFEND AND INDEMNIFY SMYTH LAWSUITS**

17 (Against Kihagi Defendants and Starr)

18 60. AmGUARD realleges and incorporates herein by reference each and every
 19 allegation contained in paragraphs 1 through 59, inclusive as though fully set forth herein.

20 61. AmGUARD contends that it has no duty to defend the Kihagi Defendants with
 21 respect to the *Smyth* Lawsuits and that it has no duty to pay toward the settlement in the *Smyth*
 22 Lawsuits. Among other things, there is no coverage under the Policy for personal and advertising
 23 injury that occurs prior to the inception of the Policy. Second, there is no coverage under the
 24 Policy for civil fines, penalties and treble damages and Insurance Code section 533 bars coverage
 25 for loss resulting from the willful act of the insured. Third, the Policy excludes coverage for
 26 personal and advertising injury caused by or at the direction of or with the consent or
 27 acquiescence of any insured with the knowledge that the act would violate the rights of another
 28 and would inflict "personal and advertising injury." Fourth, the voluntary payment provision

1 applies to bar coverage and AmGUARD has no duty to reimburse for defense fees and costs that
2 were incurred prior to tender to AmGUARD. Fifth, there is no coverage because the Kihagi
3 Defendants failed to provide timely notice of the *Smyth* Lawsuits and failed to comply with the
4 terms and conditions in the Policy. In addition, under the terms of the Policy, the Policy is "void
5 if any insured, whether before or after a loss, has committed fraud or intentionally concealed or
6 misrepresented any material fact or circumstance."

7 62. An actual controversy exists between AmGUARD, on the one hand, and
8 defendants on the other, as AmGUARD contends that it is not obligated to pay for the defense
9 and indemnity of the *Smyth* Lawsuits, whereas defendants contend to the contrary. AmGUARD
10 seeks a judicial determination that there is no coverage available under the Policy for the *Smyth*
11 Lawsuits and that AmGUARD has no duty to pay for attorneys' fees and costs and for any
12 settlement entered into in the *Smyth* Lawsuits.

13 63. A judicial declaration is necessary and appropriate at this time, under the
14 circumstances, in order that the parties may ascertain their rights and duties under the Policy.

15 WHEREFORE, AmGUARD Insurance Company prays for judgment against defendants
16 named herein as follows:

17 1. That the Court enter judgment on the First and Second Causes of Action declaring
18 that:

- 19 (a) Zorill made material misrepresentations in the Application for the Policy;
20 (b) AmGUARD reasonably and justifiably relied on the misrepresentations in issuing
21 the Policy;
22 (c) The Policy is rescinded and void *ab initio*;
23 (d) The Policy affords no coverage for the *Smyth* Lawsuits and the *Duncan* Lawsuits;
24 (e) That the insured is equitably required and ordered to place AmGUARD in the
25 position that it would have been in if the Policy had not been issued based upon material
26 misrepresentations and concealments of material fact, including but not limited to reimbursing
27 AmGUARD for all attorneys' fees and costs it has incurred arising from the underlying claims
28 referenced above and in this action in an amount to be established at trial.

2. That the Court enter judgment on the Third Cause of Action declaring that:

(a) AmGUARD was substantially prejudiced by the failure of the Kihagi Defendants to notify AmGUARD of the *Duncan* Lawsuits until after the court had entered judgment on a jury verdict in those cases; and

(b) That AmGUARD has no duty or obligation to defend or indemnify the Kihagi Defendants in the *Duncan* Lawsuits.

3. For a declaration that AmGUARD is not obligated to provide a defense with respect to the *Duncan* Lawsuits.

4. For a declaration that AmGUARD has not duty to indemnify Zorials, Kihagi and Mwangi with respect to the *Duncan* Lawsuits.

5. For a declaration that AmGUARD has no duty to indemnify the judgment in the *Duncan* Lawsuits.

6. For a declaration that AmGUARD is not obligated to provide a defense with respect to the *Smyth* Lawsuits.

7. For a declaration that AmGUARD has no duty to indemnify Zorials, Kihagi and Mwangi with respect to the *Smyth* Lawsuits.

8. For a declaration that AmGUARD has no duty to indemnify the settlement in the *Smyth* Lawsuits.

9. For attorneys' fees and costs of suit incurred herein to the extent permitted by law; and

10. For such other and further relief as the Court may deem just and proper.

Dated: April 10, 2020

WESTON & McELVAIN LLP

By: s/ Wynn C. Kaneshiro

Richard C. Weston
Wynn C. Kaneshiro
Attorneys for Defendant, Third Party
Plaintiff and Counterclaimant
AmGUARD Insurance Company

EXHIBIT “A”



INTRANET
INSURANCE
SOFTWARE

Search...

Policy Information

Policy Code:	ZOBP601626	Carrier:	AmGUARD Insurance Company
Line of Business:	Businessowner's	Agency:	ISU - PALOS VERDES INSURANCE ...
Insured Name:	Zoriall LLC	Bill Type:	Direct Bill
		Status:	Issued on 07/21/2015
Policy Period:	7/20/2015-7/20/2016	Dec CA/UW:	Laura Taylor
Renewal Of:	NEW	Agy CA/UW:	UW West Team
Renewed By:	ZOBP717380	Customer Number:	BP01455088
Lines of Business:	Businessowner's		

Show Tabs: ☐ Notes & Diaries ☐ Correspondence ☐ Conversations There are Notes and/or Diaries to review

General Info	Coverages/Locations
Forms	Underwriting Questions

Policy Questions

Policy Information Questions

Expiring Carrier:	Other
Expiring Premium:	n/a
Target Premium:	n/a
Does the prospect own or operate any other business?	* (X) Yes () No
Please explain.	
*Insured owns other income properties	

Liability Limits Questions

Will you be selecting Hired and/or Non-owned Auto coverage for this prospect? * () Yes (X) No

Notice of Insurance Related Practices

Personal information about you, including information from a credit report, may be collected from persons other than you in connection with this application for insurance and subsequent policy renewals. Such information as well as other personal and privileged information collected by us or our agents may in certain circumstances be disclosed to third parties without your authorization. You have the right to review your personal information in our files and can request correction of any inaccuracies. A more detailed description of your rights and our practices regarding such information is available upon request. Contact your agent or broker for instructions on how to submit a request to us.

If the insured cancels the policy, the final premium may be calculated on an other than pro rata basis. In that case, the amount of premium due to the insured will be 90% of the unearned premium and final premium will not be less than the full minimum premium.

Any person who knowingly and with intent to defraud any insurance company or another person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects the person to criminal and [NY: substantial] civil penalties. (not applicable in CO, DC, FL, HI, MA, NE, OH, OK, OR, VT or WA; in LA, ME, TN and VA, insurance benefits may also be denied)

In the District of Columbia, Warning: it is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines.

In Florida, any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

In Massachusetts, Nebraska, Oregon and Vermont, any person who knowingly and with intent to defraud any insurance company or another person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, may be committing a fraudulent insurance act, which may be a crime and may subject the person to criminal and civil penalties.

In Washington, it is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

THE PERSON PROVIDING THE INFORMATION SET FORTH ABOVE IS AN AUTHORIZED REPRESENTATIVE OF THE APPLICANT AND CERTIFIES THAT REASONABLE ENQUIRY HAS BEEN MADE TO OBTAIN THE ANSWERS TO QUESTIONS ON THIS APPLICATION. HE/SHE CERTIFIES THAT THE ANSWERS ARE TRUE, CORRECT AND COMPLETE TO THE BEST OF HIS/HER KNOWLEDGE.

I Agree:

*[X]

ACORD Questions - All questions need to be reviewed for accuracy

Are athletic teams sponsored?	*() Yes(X) No
Does the prospect subcontract work to others?	*() Yes(X) No
During the last five years, has any applicant been indicted for or convicted of any degree of the crime of fraud, bribery, arson or any other arson-related crime in connection with this or any other property?	*() Yes(X) No
Has the prospect had a foreclosure, repossession, bankruptcy, judgment or tax lien, business failure or any litigation during the past five (5) years?	*() Yes(X) No
Have there been any past losses or claims relating to sexual abuse or molestation allegations, discrimination or negligent hiring?	*() Yes(X) No
Are there any uncorrected fire code violations?	*() Yes(X) No
Are all employees licensed as required by law?	*() Yes(X) No
Has the prospect ever been fined by a federal, state or local governmental agency or entity related to any past or current business operations?	*() Yes(X) No
Does the prospect lease employees to or from other employers?	*() Yes(X) No
Is the applicant in full compliance with all life safety requirements and applicable building ordinances and laws?	*() Yes(X) No
Do/have past, present or discontinued operations involve(d) storing, treating, discharging, applying, disposing, or transporting of hazardous material? (E.g. landfills, wastes, fuel tanks, etc.):	*() Yes(X) No
Has the prospect had any losses in the past 4 years (current policy and prior 3 years)?	*() Yes(X) No
Has any policy or coverage been declined, cancelled or non-renewed during the prior three (3) years? **(Not applicable in Missouri - select "N/A" for MO prospects):	*() Yes(X) No() N/A

Location: 001 at 69 Hill St, San Francisco, CA 94110-2311

Location Questions

Is the risk within 1000 ft of a fire hydrant or other approved water source? *☒ Yes() No

Is the risk within 5 road miles of a responding fire station? *Y

Consecutive years in business at this location (in this current business): *1

Please describe industry management experience:

*10 years experience with other income properties

Is the prospect responsible for the maintenance of the property at this location? *☒ Yes() No

Does the prospect have a property maintenance agreement in place including snow removal from the parking lot, walkway, and roof? *☒ Yes() No

Location Deductibles Questions

Property Deductible: *2500

Territory: *013

EXHIBIT “B”

**BUSINESSOWNER'S POLICY
DECLARATIONS**

Issued: 07/21/2015

Policy No.: ZOBP601626

Renewal of: NEW

POLICY INFORMATION PAGE**[1] Named Insured and Mailing Address**

Zoriali LLC
PO Box 691889
West Hollywood, CA 90069

[2] Agency

ISU - PALOS VERDES INSURANCE AGENCY
314 Vista Del Mar
PO Box 636
Redondo Beach, CA 90277

[3] Policy Period

From July 20, 2015 to July 20, 2016, 12:01 AM, standard time at the insured's mailing address.

[4] Description of Business

Residential Property Managers

[5] Coverage

This policy consists of the Coverage Forms listed on the **Schedule of Forms and Endorsements (IIT SF 01 05)**.

[6] Premium

The premium shown below may be subject to adjustment.

Certified Acts of Terrorism - Fire Only	\$108.00
TOTAL POLICY PREMIUM	\$1,908.00
TOTAL PAYABLE	\$1,908.00

[7] Payment of Premium

In return for your payment of premium, and subject to all terms of this policy, we agree with you to provide insurance as stated in this policy.



**BUSINESSOWNER'S POLICY
DECLARATIONS**

Issued: 07/21/2015

Policy No.: ZOBP601626**Effective Date:** 07/20/2015**SECTION I – PROPERTY COVERAGES AND LIMITS OF INSURANCE**

LOCATION: 001 BUILDING: 001
69 Hill St
San Francisco, CA 94110-2311
San Francisco County

Property Deductible: \$2,500**Wind/Hail Deductible: N/A****Optional Coverages/Glass Deductible: \$500****Classification: 65146 - Apartment Buildings - Over 4 families - NO office occupancy****MANDATORY COVERAGES:****Building****Limit of Insurance \$831,000****Valuation Replacement Cost****Coverage Includes:****Automatic Increase - Building limit applies up to 2% per year****OPTIONAL COVERAGES:****Awnings Coverage**

Limit	\$2,500
-------	---------

Building Coverage

Limit	\$831,000
-------	-----------

Valuation	Replacement Cost
-----------	------------------

Inflation Guard %	2
-------------------	---

Liability

Limit	Included
-------	----------

Accounts Receivable

On-Premises Limit	\$25,000
-------------------	----------

Off-Premises Limit	25,000
--------------------	--------

Apartment Buildings Coverage

Pollutant Clean-Up and Removal	\$25,000
--------------------------------	----------

Reward Payment	Up to \$5,000
----------------	---------------

Ordinance or Law - Equipment Coverage	Building/BPP Limit
---------------------------------------	--------------------

Lock Replacement	\$5,000 per occurrence
------------------	------------------------

Tenant Move Back Expenses	\$15,000 per occurrence
---------------------------	-------------------------

Tenants' Property Legal Liability Coverage	\$10,000 per occurrence
--	-------------------------

Lock-Out or Sale, Removal and Disposal Liability Coverage	\$5,000
---	---------

Heating or Air Conditioning Loss Reimbursement Coverage	\$5,000/\$10,000
---	------------------

Debris Removal

Limit	25%/\$10,000
-------	--------------

Money and Securities

On Premises Limit	\$5,000
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**BUSINESSOWNER'S POLICY
DECLARATIONS**

Issued: 07/21/2015

Policy No.: ZOBP601626**Effective Date:** 07/20/2015

Off Premises Limit	\$5,000
Ordinance or Law	
Coverage Type	Coverage 1, 2 & 3 Combined
Cvg 1 (Loss in Value of Undamaged Portion of Bldg) Limit	\$831,000
Cvg 2 (Demolition Cost) & Cvg 3 (Increased Cost of Construction) Limit	\$100,000
Outdoor Property	
Limit	\$10,000
Outdoor Signs - Optional Coverage	
Limit	\$5,000
Valuable Papers and Records	
On-Premises Limit	\$25,000
Off-Premises Limit	\$25,000
Water Back-up and Sump Overflow	
Covered Property Limit	\$25,000
Business Income and Extra Expense Limit	\$25,000

**BUSINESSOWNER'S POLICY
DECLARATIONS**

Issued: 07/21/2015

Policy No.: ZOBP601626**Effective Date:** 07/20/2015**SECTION II – LIABILITY COVERAGES AND LIMITS OF INSURANCE**

Each paid claim for the following coverages reduces the amount of insurance we provide during the applicable annual period. Please refer to Section II – Liability in the Businessowners Coverage form and any attached endorsements.

<u>Coverage</u>	<u>Limits of Insurance</u>
Liability and Medical Expenses - Each Occurrence	\$1,000,000
General Aggregate (Other than Products and Completed Operations)	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Medical Expenses (Each Person)	\$5,000
Liability Property Damage Deductible	None
Liability Deductible - Bodily Injury	None

**BUSINESSOWNER'S POLICY
DECLARATIONS**

Issued: 07/21/2015

Policy No.: ZOBP601626**Effective Date:** 07/20/2015**POLICY WIDE COVERAGES AND LIMITS OF INSURANCE****Appurtenant Structures**

Limit \$50,000 combined Building/BPP

Business Income & Extra Expense

Limit ALS UP TO 12 MONTHS

Damage To Premises Rented To You

Limit \$50,000

Electronic Data

Limit \$10,000

Employee Dishonesty

Limit \$10,000

Fire Department Service Charge

Limit \$25,000

Fire Extinguisher Systems Recharge Expense

Limit \$5,000

Forgery or Alteration

Limit \$10,000

Fungi, Wet Rot, Dry Rot & Bacteria (Mold)

Property Limit \$15,000

Business Income/EE Number of Days 30

Liability Coverage Option Exclude Coverage

Glass Expense

Limit Actual Loss Sustained

Interruption of Computer Operations

Limit \$10,000

Loss by Theft of furs, fur garments, garments trimmed with fur

Limit \$2,500

Loss by Theft of jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals

Limit \$5,000

Loss by Theft of patterns, dies, molds and forms

Limit \$2,500

Money Orders and "Counterfeit Money"

Limit \$1,000

Newly Acquired Or Constructed Property - Buildings

Limit 25% of Building Limit/Not more than \$500,000/Bldg

Newly Acquired Or Constructed Property - Business Personal Property

Limit \$250,000

Personal Effects

Limit \$5,000

Personal Property Off Premises

Limit \$10,000

Pollutant Clean Up and Removal

Limit \$10,000

Preservation of Property

Limit Within 30 Days

Terrorism

Certified Acts Exclude Coverage

**BUSINESSOWNERS POLICY
DECLARATIONS**

Issued: 07/21/2015

Policy No.: ZOBP601626**Effective Date:** 07/20/2015**SCHEDULE OF FORMS AND ENDORSEMENTS**

<u>Form Number</u>	<u>Title</u>
IIT DS 01 05	Businessowners Policy Declarations
BP 00 03 01 10	Businessowners Coverage Form
BP IN 01 01 10	Businessowners Coverage Form Index
END SCHD	Schedule Of Forms And Endorsements
IL 99 00 08 13	Authorization and Attestation
IL P 001 01 04	U.S. Treasury Department's Office Of Foreign Assets Control ("OFAC") Advisory Notice To Policyholder
PRIV POL	Privacy Policy
BP 99 CA 12 11	CA Policy Customizations
BP 01 55 09 12	California Changes
BP 99 75 05 13	California Changes -Cancellation Premium Due
BP DS 02 08 06	Apartment Buildings Supplemental Schedule
BP 04 09 01 06	Additional Insured - Mortgagee, Assignee, or Receiver
BP 04 12 01 06	Limitation Of Coverage To Designated Premises Or Project
BP 04 17 01 10	Employment - Related Practices Exclusion
BP 05 01 07 02	Calculation Of Premium
BP 05 24 01 15	Exclusion Of Certified Acts Of Terrorism
BP 05 41 01 15	Exclusion of Certified Acts of Terrorism and Exclusion of Other Acts of Terrorism Committed Outside the United States
BP 05 42 01 15	Exclusion Of Punitive Damages Related To A Certified Act Of Terrorism
BP 06 46 04 06	California Ordinance or Law Coverage
BP 07 75 01 10	Apartment Buildings
BP 12 03 01 10	Loss Payable Clauses
BP 99 09 01 10	Fungi or Bacteria Coverage Exclusion
BP 99 10 09 08	Exclusion – Liability for Hazards of Lead
BP 99 60 03 12	Water Back-up and Sump Overflow

EXHIBIT “C”



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Oct-17-2017 4:22 pm

Case Number: CGC-15-545655

Filing Date: Oct-17-2017 3:30

Filed by: CLARK BANAYAD

Image: 06068548

JUDGMENT ON VERDICT

DALE DUNCAN ET AL VS. ANNE KIHAGE ET AL

001C06068548

Instructions:

Please place this sheet on top of the document to be scanned.

FILED
Superior Court of California
County of San Francisco

OCT 17 2017

CLERK OF THE COURT

BY: Chak Ganyan
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

DALE DUNCAN, MARTA MUNOZ
MENDOZA,

Plaintiffs,

vs.

ANNE KIHAGI (aka ANNE KIHAGI-
SWAIN, ANNE SWAIN, ANNA KIHAGI,
ANNA KIHAGI-SWAIN, ANNA SWAIN),
ZORIALI LLC, CHRISTINA MWANGI,
and DOES 1- 10, inclusive,

Defendants.

CIVIL CASE NO. CGC 15-545655

AC
~~Proposed~~ JUDGMENT ON JURY
VERDICT

Trial Date:

August 29, 2017 – October 5, 2017

Dept: 606

This action came on regularly for trial on August 29, 2017, with trial continuing on subsequent days, until and including October 5, 2017, in Department 606 of the Superior Court, the Hon. Andrew Y. S. Cheng, Judge, presiding; the plaintiffs appearing by attorneys Steven J. McDonald and Ariel Gershon, and the defendants appearing by attorneys Richard Diestel and Karen Uchiyama.

The action was previously consolidated with actions by other plaintiffs against these defendants and with cross-actions and related actions by the defendants, but the consolidated action was then severed by the Court at the time of trial, such that only the claims of DALE DUNCAN and MARTA MUNOZ MENDOZA against the defendants (stated

1 in their 2nd Amended Complaint of September 9, 2017) were at trial herein. This
2 Judgment resolves those claims of DALE DUNCAN and MARTA MUNOZ MENDOZA
3 against the defendants herein. The claims of other plaintiffs and the cross-claims and the
4 related actions of the defendants (previously consolidated herein) are not reflected in this
5 judgment and they remain pending.

6 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn
7 and testified, and evidence presented.

8 After hearing the evidence and arguments of counsel, the jury was duly instructed
9 by the Court and the cause was submitted to the jury with directions to return verdict on
10 six special verdict forms (one respective set of forms each, for the claims of the two
11 plaintiffs -- DALE DUNCAN and MARTA MUNOZ MENDOZA -- against the three
12 defendants -- ANNE KIHAGI (aka ANNE KIHAGI-SWAIN, ANNE SWAIN, ANNA KIHAGI,
13 ANNA KIHAGI-SWAIN, ANNA SWAIN), ZORIAL LLC, and CHRISTINA MWANGI). The
14 Jury deliberated and thereafter returned into court with its verdict, which is attached hereto
15 as Exhibit A:

16 It appearing by reason of said verdict, and per the provisions of San Francisco
17 Administrative Code Sections 37.9(f) and 37.10B(c)(5), which provides for money
18 damages of not less than three times actual damages to prevailing plaintiffs suing in civil
19 court for harms caused by violation of the San Francisco Rent Ordinance, San Francisco
20 Administrative Code Sections 37.9 and 37.10B, respectively, and per the provisions
21 therein that an award of damages for mental or emotional distress shall likewise be trebled
22 on a factual finding that the landlord acted in knowing violation of or in reckless disregard
23 of the Ordinance, that:

24 Plaintiff DALE DUNCAN is entitled to judgment against Defendant ANNE KIHAGI in
25 the amount of three times (3X) \$196,000.00, for a total of \$588,000.00;

26 Plaintiff DALE DUNCAN is entitled to judgment against Defendant ZORIAL LLC in
27

1 the amount of three times (3X) \$196,000.00, for a total of \$588,000.00;

2 Plaintiff DALE DUNCAN is entitled to judgment against Defendant CHRISTINA
3 MWANGI in the amount of three times (3X) \$196,000.00, for a total of \$588,000.00;

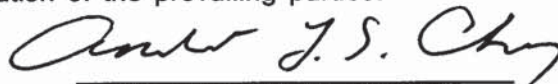
4 Plaintiff MARTA MUNOZ MENDOZA is entitled to judgment against Defendant
5 ANNE KIHAGI in the amount of three times (3X) \$196,000.00, for a total of
6 \$588,000.00;

7 Plaintiff MARTA MUNOZ MENDOZA is entitled to judgment against Defendant
8 ZORIALI LLC in the amount of three times (3X) \$196,000.00, for a total of
9 \$588,000.00;

10 Plaintiff MARTA MUNOZ MENDOZA is entitled to judgment against Defendant
11 CHRISTINA MWANGI in the amount of three times (3X) \$196,000.00, for a total of
12 \$588,000.00.

13 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs
14 have and recover from said defendants the sum of \$3,528,000.00 -- as follows: Plaintiff
15 DALE DUNCAN shall have and recover \$588,000.00 from Defendant ANNE KIHAGI;
16 Plaintiff DALE DUNCAN shall have and recover \$588,000.00 from Defendant ZORIALI
17 LLC; Plaintiff DALE DUNCAN shall have and recover \$588,000.00 from Defendant
18 CHRISTINA MWANGI; Plaintiff MARTA MUNOZ MENDOZA shall have and recover
19 \$588,000.00 from Defendant ANNE KIHAGI; Plaintiff MARTA MUNOZ MENDOZA shall
20 have and recover \$588,000.00 from Defendant ZORIALI LLC; Plaintiff MARTA MUNOZ
21 MENDOZA shall have and recover \$588,000.00 from Defendant CHRISTINA MWANGI; --
22 with interest thereon at the rate of ten percent (10%) per annum from the date of the
23 entry of this judgment until paid, together with all appropriate costs and disbursements, if
24 any, to be awarded on timely application of the prevailing parties.

25 Date: 10/17/2017


ANDREW Y.S. CHENG

Judge of the Superior Court

EXHIBIT A

FILED
Superior Court of California
County of San Francisco

OCT 5 - 2017

CLERK OF THE COURT
BY: Clk. Bonyea
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DALE DUNCAN, MARTA MUNOZ
MENDOZA,

Plaintiffs,

v.

ANNE KIHAGI, ZORRIALL LLC,
CHRISTINA MWANGI,,

Defendants.

Case No. CGC-15-545655

SPECIAL VERDICT FORM

SPECIAL VERDICT FORM

1.

CASE NO. CGC-15-545655

Special Verdict Form – Dale Duncan v. Christina Mwangi

Wrongful Eviction in Violation of San Francisco Rent Ordinance Section 37.9

1. Did Christina Mwangi endeavor to recover possession or recover possession of the Subject Unit in bad faith, with ulterior reasons, or without honest intent?

Answer "Yes" or "No": Yes

2. Was Christina Mwangi's dominant motive in recovering possession to use or occupy the Subject Unit as her principal residence for a period of at least 36 continuous months?

Answer "Yes" or "No": No

If you answered "Yes" to Question 1 or if you answered "No" to Question 2, continue to Question 3. Otherwise, skip Questions 3-4, and go to Question 5.

3. What are Dale Duncan's damages for wrongful eviction in violation of San Francisco Rent Ordinance section 37.9?

Economic damages:

- a. Moving costs: \$ 0
- b. Lost rental value after termination of tenancy: \$ 150,000
- c. Other economic losses: \$ 0

Non-economic Damages:

- d. Past mental or emotional damages: \$ 30,000

Continue to Question 4.

4. When endeavoring to recover possession or when recovering possession of the Subject Unit, did Christina Mwangi act in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Continue to Question 5.

Violation of San Francisco Rent Ordinance Section 37.10B

5. Did Christina Mwangi violate San Francisco Rent Ordinance section 37.10B by a forbidden act or omission against Dale Duncan?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 5, continue to Question 6. Otherwise, skip Questions 6-8.

6. Was Christina Mwangi's forbidden act or omission against Dale Duncan done in bad faith?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 6, continue to Question 7. Otherwise, skip Questions 7-8.

7. What are Dale Duncan's damages for violation of San Francisco Rent Ordinance section 37.10B?

Economic damages:

a. Lost rental value during tenancy: \$ 1,000

Non-economic Damages:

b. Past mental or emotional damages: \$ 15,000

Continue to Question 8.

8. Was Christina Mwangi's forbidden act or omission against Dale Duncan done in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Signed: Meghan Preuer
Presiding Juror

Dated: Oct. 5, 2017

Special Verdict Form – Dale Duncan v. Anne Kihagi

Wrongful Eviction in Violation of San Francisco Rent Ordinance Section 37.9

1. Did Anne Kihagi endeavor to recover possession or recover possession of the Subject Unit?

Answer "Yes" or "No": Yes

If you answered Question 1 "No," then go to Question 5. If you answered Question 1 "Yes," then go to Question 2.

2. Did Anne Kihagi wrongfully endeavor to recover possession or recover possession of Dale Duncan's rental unit in violation of the San Francisco Rent Ordinance 37.9?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 2, continue to Question 3. Otherwise, skip Questions 3-4, and go to Question 5.

3. What are Dale Duncan's damages for wrongful eviction in violation of San Francisco Rent Ordinance section 37.9?

Economic damages:

- a. Moving costs: \$ 0
- b. Lost rental value after termination of tenancy: \$ 150,000
- c. Other economic losses: \$ 0

Non-economic Damages:

- d. Past mental or emotional damages: \$ 30,000

Continue to Question 4.

4. When endeavoring to recover possession or when recovering possession of the Subject Unit, did Anne Kihagi act in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Continue to Question 5.

Violation of San Francisco Rent Ordinance Section 37.10B

5. Did Anne Kihagi violate San Francisco Rent Ordinance section 37.10B by a forbidden act or omission against Dale Duncan?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 5, continue to Question 6. Otherwise, skip Questions 6-8.

6. Was Anne Kihagi's forbidden act or omission against Dale Duncan done in bad faith?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 6, continue to Question 7. Otherwise, skip Questions 7-8.

7. What are Dale Duncan's damages for violation of San Francisco Rent Ordinance section 37.10B?

Economic damages:

a. Lost rental value during tenancy: \$ 1,000

Non-economic Damages:

b. Past mental or emotional damages: \$ 15,000

Continue to Question 8.

8. Was Anne Kihagi's forbidden act or omission against Dale Duncan done in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Signed: Meghan Freese
Presiding Juror

Dated: Oct. 5, 2017

Special Verdict Form – Dale Duncan v. Zorall LLC

Wrongful Eviction in Violation of San Francisco Rent Ordinance Section 37.9

1. Did Zorall LLC endeavor to recover possession or recover possession of the Subject Unit?

Answer "Yes" or "No": Yes

If you answered Question 1 "No," then go to Question 5. If you answered Question 1 "Yes," then go to Question 2.

2. Did Zorall LLC wrongfully endeavor to recover possession or recover possession of Dale Duncan's rental unit in violation of the San Francisco Rent Ordinance 37.9?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 2, continue to Question 3. Otherwise, skip Questions 3-4, and go to Question 5.

3. What are Dale Duncan's damages for wrongful eviction in violation of San Francisco Rent Ordinance section 37.9?

Economic damages:

- a. Moving costs: \$ 0
- b. Lost rental value after termination of tenancy: \$ 150,000
- c. Other economic losses: \$ 0

Non-economic Damages:

- d. Past mental or emotional damages: \$ 30,000

Continue to Question 4.

4. When endeavoring to recover possession or when recovering possession of the Subject Unit, did Zorall LLC act in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Continue to Question 5.

Violation of San Francisco Rent Ordinance Section 37.10B

5. Did Zorill LLC violate San Francisco Rent Ordinance section 37.10B by a forbidden act or omission against Dale Duncan?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 5, continue to Question 6. Otherwise, skip Questions 6-8.

6. Was Zorill LLC's forbidden act or omission against Dale Duncan done in bad faith?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 6, continue to Question 7. Otherwise, skip Questions 7-8.

7. What are Dale Duncan's damages for violation of San Francisco Rent Ordinance section 37.10B?

Economic damages:

a. Lost rental value during tenancy: \$ 1,000

Non-economic Damages:

b. Past mental or emotional damages: \$ 15,000

Continue to Question 8.

8. Was Zorill LLC's forbidden act or omission against Dale Duncan done in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Signed: Miguel A. Pineda
Presiding Juror

Dated: Oct. 5, 2017

Special Verdict Form – Marta Mendoza v. Christina Mwangi

Wrongful Eviction in Violation of San Francisco Rent Ordinance Section 37.9

1. Did Christina Mwangi endeavor to recover possession or recover possession of the Subject Unit in bad faith, with ulterior reasons, or without honest intent?

Answer "Yes" or "No": Yes

2. Was Christina Mwangi's dominant motive in recovering possession to use or occupy the Subject Unit as her principal residence for a period of at least 36 continuous months?

Answer "Yes" or "No": No

If you answered "Yes" to Question 1 or if you answered "No" to Question 2, continue to Question 3. Otherwise, skip Questions 3-4, and go to Question 5.

3. What are Marta Mendoza's damages for wrongful eviction in violation of San Francisco Rent Ordinance section 37.9?

Economic damages:

- a. Moving costs:

\$ 0

- b. Lost rental value after termination of tenancy:

\$ 150,000

- c. Other economic losses:

\$ 0

Non-economic Damages:

- d. Past mental or emotional damages:

\$ 30,000

Continue to Question 4.

4. When endeavoring to recover possession or when recovering possession of the Subject Unit, did Christina Mwangi act in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Continue to Question 5.

Violation of San Francisco Rent Ordinance Section 37.10B

5. Did Christina Mwangi violate San Francisco Rent Ordinance section 37.10B by a forbidden act or omission against Marta Mendoza?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 5, continue to Question 6. Otherwise, skip Questions 6-8.

6. Was Christina Mwangi's forbidden act or omission against Marta Mendoza done in bad faith?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 6, continue to Question 7. Otherwise, skip Questions 7-8.

7. What are Marta Mendoza's damages for violation of San Francisco Rent Ordinance section 37.10B?

Economic damages:

a. Lost rental value during tenancy: \$ 1,000

Non-economic Damages:

b. Past mental or emotional damages: \$ 15,000

Continue to Question 8.

8. Was Christina Mwangi's forbidden act or omission against Marta Mendoza done in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Signed: Meghan J. Lewis
Presiding Juror

Dated: Oct. 5, 2017

Special Verdict Form – Marta Mendoza v. Anne Kihagi

Wrongful Eviction in Violation of San Francisco Rent Ordinance Section 37.9

1. Did Anne Kihagi endeavor to recover possession or recover possession of the Subject Unit?

Answer "Yes" or "No": Yes

If you answered Question 1 "No," then go to Question 5. If you answered Question 1 "Yes," then go to Question 2.

2. Did Anne Kihagi wrongfully endeavor to recover possession or recover possession of Marta Mendoza's rental unit in violation of the San Francisco Rent Ordinance 37.9?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 2, continue to Question 3. Otherwise, skip Questions 3-4, and go to Question 5.

3. What are Marta Mendoza's damages for wrongful eviction in violation of San Francisco Rent Ordinance section 37.9?

Economic damages:

a. Moving costs: \$ 0

b. Lost rental value after termination of tenancy: \$ 150,000

c. Other economic losses: \$ 0

Non-economic Damages:

d. Past mental or emotional damages: \$ 30,000

Continue to Question 4.

4. When endeavoring to recover possession or when recovering possession of the Subject Unit, did Anne Kihagi act in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Continue to Question 5.

Violation of San Francisco Rent Ordinance Section 37.10B

5. Did Anne Kihagi violate San Francisco Rent Ordinance section 37.10B by a forbidden act or omission against Marta Mendoza?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 5, continue to Question 6. Otherwise, skip Questions 6-8.

6. Was Anne Kihagi's forbidden act or omission against Marta Mendoza done in bad faith?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 6, continue to Question 7. Otherwise, skip Questions 7-8.

7. What are Marta Mendoza's damages for violation of San Francisco Rent Ordinance section 37.10B?

Economic damages:

a. Lost rental value during tenancy: \$1,000

Non-economic Damages:

b. Past mental or emotional damages: \$15,000

Continue to Question 8.

8. Was Anne Kihagi's forbidden act or omission against Marta Mendoza done in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Signed: Miguel Pineda Re
Presiding Juror

Dated: Oct. 5, 2017

Special Verdict Form – Marta Mendoza v. Zorials LLC

Wrongful Eviction in Violation of San Francisco Rent Ordinance Section 37.9

1. Did Zorials LLC endeavor to recover possession or recover possession of the Subject Unit?

Answer "Yes" or "No": Yes

If you answered Question 1 "No," then go to Question 5. If you answered Question 1 "Yes," then go to Question 2.

2. Did Zorials LLC wrongfully endeavor to recover possession or recover possession of Marta Mendoza's rental unit in violation of the San Francisco Rent Ordinance 37.9?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 2, continue to Question 3. Otherwise, skip Questions 3-4, and go to Question 5.

3. What are Marta Mendoza's damages for wrongful eviction in violation of San Francisco Rent Ordinance section 37.9?

Economic damages:

- a. Moving costs: \$ 0
- b. Lost rental value after termination of tenancy: \$ 150,000
- c. Other economic losses: \$ 0

Non-economic Damages:

- d. Past mental or emotional damages: \$ 30,000

Continue to Question 4.

4. When endeavoring to recover possession or when recovering possession of the Subject Unit, did Zorials LLC act in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Continue to Question 5.

Violation of San Francisco Rent Ordinance Section 37.10B

5. Did Zorill LLC violate San Francisco Rent Ordinance section 37.10B by a forbidden act or omission against Marta Mendoza?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 5, continue to Question 6. Otherwise, skip Questions 6-8.

6. Was Zorill LLC's forbidden act or omission against Marta Mendoza done in bad faith?

Answer "Yes" or "No": Yes

If you answered "Yes" to Question 6, continue to Question 7. Otherwise, skip Questions 7-8.

7. What are Marta Mendoza's damages for violation of San Francisco Rent Ordinance section 37.10B?

Economic damages:

a. Lost rental value during tenancy: \$ 1,000

Non-economic Damages:

b. Past mental or emotional damages: \$ 15,000

Continue to Question 8.

8. Was Zorill LLC's forbidden act or omission against Marta Mendoza done in knowing violation of or in reckless disregard of the San Francisco Rent Ordinance?

Answer "Yes" or "No": Yes

Signed: Richard P. Prewitt
Presiding Juror

Dated: Oct. 5, 2017

PROOF OF SERVICE

I, Regina Macleod, declare:

I am employed in the County of Los Angeles, state of California. I am over the age of 18 and not a party to the within action; my business address is 1960 East Grand Avenue, Suite 400, El Segundo, California 90245.

On April 10, 2020, I served a copy of the following document:

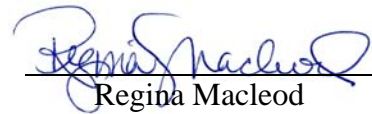
**THIRD PARTY PLAINTIFF AND COUNTERCLAIMANT AMGUARD
INSURANCE COMPANY'S THIRD PARTY COMPLAINT AND
COUNTERCLAIM FOR RESCISSION AND DECLARATORY RELIEF**

By electronically filing the foregoing document with the Clerk of the United States District Court, Northern District of California, using its ECF system, which electronically notifies the persons on the attached service list at the email addresses registered with the ECF System.

I declare under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 10, 2020 at Hawthorne, California.


Regina Macleod

SERVICE LIST

Mary E. McPherson
TRESSLER LLP
2 Park Plaza, Suite 1050
Irvine, California 92614
Telephone: (949) 336-1224
Facsimile: (949) 752-0645
E-mail: mmcpherson@tresslerllp.com

*Attorneys for Plaintiff,
Starr Indemnity & Liability
Company*